(21)

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO.109/2003

Applicants
Respondents

1) Smt Shanti Devi,
W/o Late Shri Satyanarayana Singh, aged about 42 years

2) Sanjay Singh,
S/o Late Shri Satyanarayan Singh, aged about 22 years

3) Sushil Singh
S/o Late Shri Satyanarayan Singh, aged about 18 years.

All are residents of village Sairrai, PO Darridih, PS Ambikapur, Tah-Lundra, Distt Sarguja (CG)

Vs.

Non-applicants
Appellants

1) Smt Bijal Devi
Widow of Late Shri Satyanarayan Singh, aged about 46 years

2) Manoj Kumar, S/o Late Shri Satyanarayan Singh, aged about 25 years

3) Sushma, D/o Late Shri Satyanarayan Singh, aged about 23 years

Non-applicants
Respondents

4) Santosh Singh, S/o Late Shri Satyanarayan Singh, aged about 20 years

All are residents of village Sairrai, PO Darridih, PS Ambikapur, Tah-Lundra, Distt Sarguja (CG)

5) Divisional Forest Officer
East Region, Office of the Forest Department, Near Pratappur Naaka, Ambikapur Distr Surguja

6) Conservator of forest, Surguja Circle, Ambikapur,
Dist Sarguja CG

PRESENT:

Shri DN Prajapati, counsel for the applicants.

Shri SK Mehta with Shri NK Mehta, counsel for the non-applicants No. 1 to 4.

Shri JD Bajpai, Government Advocate for the State / non-applicants No.5 & 6.

ORDER

(Passed on 9th January)

This Revision is directed against the order dated 07.02.2003 passed by VI Additional District Judge (FTC), Ambikapur in Miscellaneous Civil Appeal No.6/2002, whereby the appeal has been allowed, with a direction to issue succession certificate on payment of Court fee in favour of appellants and respondents Sanjay, Santosh and Sushil, declaring each of them to be entitled for 1/6th share.

2) Smt Bijal Devi, Manoj Kumar and Sushma filed an application under Section 372 of the Indian Succession Act for

grant of succession certificate in respect of retiral benefits accrued, as a result of the death of Satyanarayan Singh, who was husband of Bijal Devi and father of Manoj Kumar and Sushma. Satyanarayan Singh was a government employee in the sub-ordination of Divisional Forest Officer and Conservator of Forest, non-applicants No.5 & 6. He died on 08.11.1997. The application was opposed by Smt Shanti Devi, Sanjay Singh, Santosh Singh and Sushil Singh on the ground that Smt Shanti Devi is the legally wedded wife of Satyanarayan Singh; Sanjay, Santosh & Sushil are his legitimate children, whereas Smt Bijal Devi is kept of Satyanarayan Singh; Manoj and Sushma are the illegitimate children of Santyanarayan Singh. They also pray to grant a succession certificate in their favour.

3) Both the parties adduced oral and documentary evidence in favour of their case. Learned Civil Judge Class I Ambikapur after evaluating the evidence, held that Santi Devi is the legally wedded wife of Satyanarayan Singh and her three sons are legitimate children, who are the successors of late Satyanarayan Singh, therefore, dismissed the application filed by Smt Bijal Devi & others by his order dated 06.04.2002, passed in succession case No.3/1999. Aggrieved with that

order, non-applicants No.1 to 3 filed an appeal, and as a result of that appeal, the impugned order has been passed by the appellate Court.

4) During the argument, applicants limited their revision to the extent that Smt Shanti Devi is also legally wedded wife of Satyanarayan Singh, and entitled for 1/7th share of his property. Therefore, parties are heard finally on the limited question.

5) Learned appellate Court, after due appreciation of evidence, held that, Bijal Devi is the legally married wife of Late Satyanarayan Singh. Learned counsel for the applicants contended that Bijal Devi in her statement recorded by Naib Tahsildar, Lundra on 17.12.1998 has admitted that Shanti Devi is the first wife of Satyanarayan Singh and when she was married, by that time Shanti Devi had no children. Therefore, on this basis, it was to be declared that Shanti Devi is the legally wedded wife of Satyanarayan Singh. Per contra, learned counsel for non-applicants No.1 to 4 argued that, Naib Tahsildar Lundra has no jurisdiction to record such a statement which Bijal Devi never gave. Naib Tahsildar Lundra has not been examined to

prove Ex.D/1. Therefore, learned appellate Court properly appreciated the validity of said document and also after due appreciation of evidence, held Bijal Devi to be the legally wedded wife of Satyanarayan Singh.

6) Smt Bijal Devi, AW-3 in her statement, stated that neither any enquiry has been made nor she has given any statement. She also stated that she was married to Satyanarayana Singh and thereafter he kept Shanti Devi. In her cross examination, she denied the statement of Ex.D/1 and stated that no such statement has been given by her. She admits her signature on Ex.D/1 and explained that Tahsildar gave her impression that amount is to be withdrawn and thereby obtained her signature. To prove Ex.D-1, the officer who recorded it has neither been called nor been examined.

7) NAW-2 Dheersai in his cross examination stated that Satyanarayan Singh married Bijal Devi. When Shanti Devi came, at that time Manoj was born and his age was 4-5 years and Bijal Devi was again pregnant. Shanti Devi, NAW-1 in her cross examination stated that after marriage, she was left by her husband for two years and when she came, by that time, Manoj

was born. If both the evidences are read together, then it will be evident that Shanti Devi after her marriage was away from her husband only for two years and when she came back, by that time, Manoj, who was born out of the wedlock of Bijal Devi and Satyanarayan Singh was aged about 4-5 years. Therefore, it appears that after the marriage of Bijal Devi with Satyanarayan Singh, Shanti Devi was married to him.

8) Ex.P-3 is the certified copy of order passed by Judicial Magistrate 1st Class Ambikapur in Misc. Criminal Case No.194/94 on 1-12-1995. This is an order on application filed under Section 127 of the Cr.P.C. for enhancement of maintenance amount. The order had been passed against Satyanarayan Singh, who never objected that Bijal Devi is not his legally wedded wife. The Court accepting Bijal Devi to be the legal wife of Satyanarayan Singh, enhanced the maintenance amount. This judicial order also corroborates the fact that Bijal Devi is the legally married wife of Satyanarayan Singh.

9) In the result, I am of the opinion that learned appellate Court who after meticulous appreciation of all the evidence, held Bijal Devi to be the first leaally married wife of

(77)

Satyanarayan Singh, did not commit any error, therefore, the impugned order does not call for any interference.

10) The revision is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

padma